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**CLIMATE**  
Connecting Climate Change and the Law



**July 2, 2024**

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In this week's edition of Cadwalader Climate, we discuss the EU's final approval of the long-awaited – and highly debated – Nature Restoration Law. Staying on theme, we discuss the European Council's agreement to adopt another anticipated environmental regulation – the Green Claims Directive. We also discuss the Brazilian federal police's Operation Greenwashing, which resulted in arrests over fraudulent carbon credit schemes involving illegal timber trade.

### EU Nature Restoration Law Receives Long-Awaited Approval

On June 17, 2024, the European Council voted to adopt the delayed [EU Nature Restoration Law](#) obligating Member States to reverse environmental and ecosystem damage to land and seas in their jurisdictions. Member States are required to adopt National Restoration Plans that set out the measures they will take to restore and reverse damage, submitting their first plans to the European Commission within two years of the law coming into force (so by mid-2026). At least 30% of in-scope habitat types that are not in good condition need to have measures in place. This proportion of habitat types is estimated to comprise approximately 20% of the EU's land and sea territory. By 2040, 60% of habitats must have restoration measures in place, and 90% by 2050. States must also give priority to areas listed under Natura 2000 designation of valuable and threatened species and habitats.

Once restored, the habitats must be maintained in good condition. Where it is not possible for a Member State to restore an entire in-scope area by 2050, they may choose a target between 90%-100% and make plans to target this level accordingly.

The Nature Restoration Law was passed by the European Parliament in February but since then, had been subject to a deadlock; its passage had become subject to uncertainty as a result of protests by farmers in almost every Member State, some of which turned violent. The Nature Restoration Law is a key pillar of the European Green Deal and was subject to intense negative media coverage, prompting 6,000 scientists to publish an open letter criticizing opponents for spreading misinformation. At the June 17 vote, Member States remained in deadlock until Austria's Environment Minister defied her coalition to exercise her vote (of conscience) in favor of the law. The decision prompted the Austrian Chancellor, who is a strong opponent of the regulation, to file a complaint at the European Court of Justice, asking that the vote be annulled. He also filed a complaint against the Environment Minister personally on the basis that she had allegedly abused the power of her office and violated the country's constitution.

The regulation is the EU's response to the Kunming-Montreal Global Biodiversity Framework (GBF) adopted during the fifteenth meeting of the Conference of the Parties (COP15). The GBF supports the achievement of the United Nations' Sustainable Development Goals and sets an ambitious pathway to restore and implement measures to maintain nature and biodiversity.

The global spotlight has, as of late, been trained on the loss prevention and preservation of nature and biodiversity. In September 2023, the Taskforce on Nature Related Disclosures [published its final recommendations](#) and in the same month, the UK and France set out

plans to **launch a new biodiversity credits scheme**. Various sectors have also been urged to do more to achieve biodiversity targets such as **banking** and **insurance**.

### **EU Council Adopts Position on Green Claims Directive**

On June 17, 2024, the European Council announced that it had reached an agreement on a series of proposed measures aimed at protecting consumers from greenwashing, including the Green Claims Directive. Under the original draft put forward by the European Commission, companies would have to substantiate – and obtain independent verification of – their green claims. The directive also aims to regulate the use of environmental labels, requiring them to be reliable, transparent, independently verified and regularly reviewed. In addition, it should be clear which part of the claim ‘carbon neutral’ or ‘net zero’ concerns a company’s own operations and which aspects are based on offsets. **As we have discussed extensively in previous editions**, the Green Claims Directive is part of a wider package of measures specifically designed to protect consumers and focus on environmental and circular economy proposals; related measures include amendments to the unfair commercial practices directive (UCPD) and consumer rights directive (CRD).

However, the directive, like the Nature Restoration Law and a number of other proposed EU environmental regulatory measures, is another bill under the EU’s Green Deal umbrella that has been scaled back following heated political debate. As the political landscape shifts, with the EU election resulting in a higher proportion of votes for parties on the right, proposed environmental regulation such as the Green Claims Directive is criticized for being overly burdensome for companies that are already facing a swath of environmental reporting obligations and stricter rules on pollution and waste.

The streamlined version of the law would allow companies to assess inhouse whether certain green claims are scientifically credible under certain circumstances, lessening the administrative and financial burden for companies and eliminating the requirement for mandatory independent verification.

Another aspect of the directive subject to being scaled back is the extent to which a company can claim it is ‘carbon neutral’ by virtue of offsetting its emissions via carbon credit schemes. The European Parliament’s position was that such claims ought to be banned unless companies have first done as much as they can to reduce emissions in their own direct operations, with such schemes being used for residual emissions only. However, the European Council’s position distinguishes between ‘offset claims’ that use carbon credits to balance out emissions to reach net zero, and ‘contribution claims’ that use carbon credits to contribute to climate action. Only ‘offset claims’ would be required to prove the net zero target, show progress towards decarbonization and disclose the percentage of emissions offset.

A majority of EU countries support the scaling back of the Green Claims Directive with reportedly only four countries – including Germany and Austria – remaining in support of the original draft.

The Council’s position forms the basis for negotiations with the European Parliament, which will shape the final form of the directive. Negotiations will begin in this legislative cycle that commenced at the end of the election period on June 9, 2024.

## **Brazil Federal Police Take Enforcement Action Against Fraudulent Carbon Credits Group**

On June 5, 2024, federal police in Brazil launched “Operation Greenwashing,” with the aim of dismantling a criminal organization suspected of selling approximately R\$180 million in carbon credits where the underlying projects involved the illegal invasion of areas across Brazil.

The investigation revealed that the largest carbon credit producer in Brazil – and one of the largest in the world – ran five REDD+ (reducing emissions from deforestation and forest degradation) projects in the Brazilian Amazon, covering over 500,000 hectares of public land. The carbon credits sold in connection with these projects are generated by protecting an area that could otherwise be deforested. It is [reported by nonprofit environmental science and conservation news platform Mongabay](#) that the areas were being used to conceal the true origin of timber taken from illegally deforested areas using forged documents.

In Brazil, timber must be accompanied by a Forest Origin Document known as a DOF. A certain number of DOFs can be issued by an owner of a forest management plan, provided that such plan has been approved by relevant authorities, and corresponds to the volume of trees allowed to be extracted from that area. However, an investigation carried out by the Center for Climate Crime Analysis (CCCA), a Netherlands-based nonprofit, found that the forest management plans connected to the REDD+ projects that are the subject of Operation Greenwashing showed a discrepancy between the volume of timber taken from those areas and the volume declared through the DOF system. The discrepancy amounts to approximately 4,200 truckloads of wood.

[In a press release published](#) by the Brazilian government, the operation involved five preventative arrest warrants and 76 search and seizure warrants being executed across the states of Rondônia, Amazonas, Mato Grosso, Paraná, Ceará and São Paulo. Officers also carried out 108 precautionary measures other than prison, eight suspensions from public service, four suspensions from professional registration with CREA (the Regional Council for Engineering, Architecture and Agronomy, the agency with which professionals responsible for any projects in Brazil must be registered), seven blocks from issuing DOFs and the seizure of R\$1.6 billion.

The sheer scale of the enterprise is unprecedented in the carbon credit sphere and serves to reinforce the controversy that perpetually circulates around them. Carbon credit schemes have long been criticized, raising questions surrounding quality and effectiveness and allegations of greenwashing. We have discussed carbon credits and voluntary carbon markets extensively in recent issues, including [here](#) on June 18 and [here](#) on June 11. In January 2024, the Brazilian Chamber of Deputies approved a bill that establishes a regulated carbon market as part of President Lula’s green agenda. The legislation is being fast-tracked and a final version is expected to be voted on a submitted for presidential sanction before the end of 2024. However, the bill exempts livestock and primary agriculture, which combined are one of the country’s main sources of greenhouse gas emissions, and it is argued that it therefore limits the environmental impact an efficient carbon credit market should have. Commenting on Operation Greenwashing in Congress, the chief investigating officer stated that it is not intended to undermine the carbon credit market, but rather to strengthen the way in which projects are documented to prevent the reoccurrence of such reputationally damaging misconduct.

Although the government press release on Operation Greenwashing does not identify the entities or individuals involved, the operation is reportedly, at least in part, related to a scheme whose purchasers include a major financial institution, a credit broker, two airlines and international conglomerates. The carbon credits connected with the REDD+ projects were certified by Verra, one of the world's largest voluntary carbon market registries. In line with its rules, the projects were verified by auditors but no irregularities were identified at the time. As of June 11, however Verra has suspended the projects associated with the investigation.

Tackling illegal deforestation is an ongoing challenge for Brazil. In January 2023, agents from Brazil's environmental protection agency, the Institute of Environment and Renewable Natural Resources (Ibama), **carried out the first significant environmental enforcement activity** with the aim of preventing loggers and ranchers from carrying out illegal deforestation and land clearance for agriculture. In June 2023, **we discussed** ClientEarth's complaint against Cargill over alleged deforestation and related human rights issues in Brazil. Globally, tackling deforestation is a key priority for lawmakers too. In December 2022, **the European Commission announced** the Deforestation Regulation, which will require companies to show that the products they are selling within the territory do not come from forest destruction. In order to sell their products in the EU, companies will have to show their geographical origination, which in practice means providing the relevant GPS coordinates to prove the area has not been deforested. On May 13, 2024, **the U.S. Department of Agriculture announced that**, in partnership with 17 States, it will conserve nearly 168,000 acres of "economically and ecologically significant" forestlands. We discuss other significant anti-deforestation measures in our May 21 issue **here**.